

1 Q. Is it your memory that you were shown  
2 photos of Mrs. Brow at some point while in  
3 court?

MR. FELDMAN: Objection.

5 A. It might have been. I'm telling you I  
6 don't remember where. I remember seeing them  
7 but I don't know where I was.

8 Q. As you sit here today are you able to  
9 testify that at any time Nancy Taylor, Chief  
10 Connors or any other Ayer Police officers showed  
11 you photographs of Mrs. Brow?

12 A. No, I can't say it wasn't them.

13 Q. Can you say it was them?

14 A. No, because I don't remember who it  
15 was or where. I remember seeing them.

16 (Discussion off the record).

17 (Short recess).

18 Q. Back to page 2 of your Affidavit  
19 please, Miss Marsh. Sorry. Actually beginning  
20 on paragraph eight on the first page.

21 You state in your Affidavit at the  
22 pre-trial hearing and the trial I testified to  
23 some things that were not true and were

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198

1 suggested to me. Some of these things are: And  
2 the first is; I called the diner the night of  
3 May 20, 1980 after Kenny had left to go to work  
4 there and asked to speak with Kenny but I was  
5 told he was not there. That never happened.

6 Did you tell Mr. Scheck that you  
7 had never attempted to reach Kenny Waters at  
8 work on May 20, 1980?

9 A. Yes.

10 Q. But today you don't recall that one  
11 way or the other, correct?

12 MR. FELDMAN: Objection.

13 A. I don't know.

14 Q. Do you see at paragraph eight you say  
15 some things were not true and were suggested to  
16 me. Do you see that on the first page?

17 A. Yep.

18 Q. In your meeting with Mr. Scheck did he  
19 suggest any facts that he believed to be true in  
the case to you to see if you agreed with him?

21 A. Did he what?

22 Q. Suggest any facts to you that he felt  
23 were true to see if you agreed with him?

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1 MR. FELDMAN: Objection.

2 A. He asked me questions. I don't know.  
3 I don't exactly remember what they were.

4 Q. Did he suggest to you what he felt the  
5 police had done wrong?

6 MR. FELDMAN: Objection.

7 A. No, not at all.

8 Q. Do you personally have any expectation  
9 of financial gain should the plaintiff, the  
10 estate of Mr. Waters, prevail in this case?

11 A. No.

12 Q. Good enough.

13 MR. TEHAN: I'm done. I may have  
14 some re-cross but I'm done. Do you need to take  
15 a break?

16 MR. FELDMAN: No.

17 **Examination by Mr. Feldman:**

18 Q. **Good** afternoon, Miss Marsh. As you  
19 know my name is Rob Feldman and I'm going to ask  
20 you a few questions. And as Attorney Tehan  
21 mentioned, if there's any questions you don't  
22 understand the way I'm asking, tell me and I  
23 will try to rephrase them in a way that's more

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200

1 clear.

2 I'm going to ask you some  
3 questions about Exhibit Six which I think you  
4 have in front of you which is the Affidavit  
5 signed on April 18, 2001.

6 Before I do, I just want to ask  
7 you a couple of questions about Robert Osborne.  
8 Do you recall whether Mr. Osborne ever informed  
9 the Ayer Police that what he had told them about  
10 your knowledge concerning the Brow murder, did  
11 he ever tell you that he had informed the Ayer  
12 Police that what he told them wasn't true?

13 MR. TEHAN: Objection to the form.

14 A. He did call them. And I said this  
15 this afternoon. He called them and said that  
16 for a thousand dollars he could get me to change  
17 my testimony because it wasn't true.

18 Q. Did he ever tell you who he spoke  
19 with?

20 A. No, he didn't. He just said he called  
21 the Ayer Police.

22 Q. And he told you that?

23 A. I don't know how I heard it, but yeah,

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1 I believe it came from him.

2 Q. Do you know whether Mr. Osborne was  
3 ever provided anything of value by the Ayer  
4 Police Department?

5 A. No, I don't.

6 Q. He never told you one way or the  
7 other?

8 A. No. He knew better.

9 Q. Now, going to Exhibit Six, the  
10 Affidavit, at the time you signed this Affidavit  
11 to the best of your knowledge and memory were  
12 the statements in the Affidavit true?

13 A. Yes.

14 Q. When you agreed to provide this  
15 Affidavit which is Exhibit Six, you didn't agree  
16 to provide the Affidavit because you in some way  
17 had loyalty to Ken Waters?

18 A. Absolutely not.

19 Q. In fact, at the time you signed this  
20 Affidavit in 2001 if anything you still probably  
21 felt -- had less than good feelings about  
22 Kenneth Waters, correct?

23 A. Right.

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202

1 Q. Did you have an understanding at the  
2 time you agreed to sign this Affidavit that it  
3 might be used in connection with efforts to help  
4 free Mr. Waters?

5 A. Yes.

6 Q. I'm going to ask you a couple of  
7 questions. You described a meeting with  
8 Attorney Barry Scheck. To the best of your  
9 memory you met with him prior to executing this  
10 Affidavit?

11 A. Uh-huh.

12 MR. TEHAN: Could I press for an  
13 answer. It was ambiguous. She said uh-huh.

14 Q. Would you answer --

15 A. Yes.

16 Q. In connection with that meeting with  
17 Attorney Scheck did he in any way pressure  
18 you --

19 A. No.

20 Q. -- to submit an Affidavit?

21 A. No.

22 Q. In fact, is it fair to say that by the  
23 time you met with Attorney Scheck in 2001 your

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1 ability to describe in full detail what happened  
2 in connection with your participation in the  
3 prosecution of Kenneth Waters, you were happy to  
4 be able to tell the complete story?

5 A. Yes.

6 Q. Is the complete story concerning your  
7 interactions with Nancy Taylor and the Ayer  
8 Police Department described in paragraphs one  
9 through nine in this Affidavit, Exhibit Six?

10 MR. TEHAN: Objection.

11 A. Yes.

12 Q. Do you recall in 2001 after providing  
13 this Affidavit meeting with a district attorney  
14 named Sheila Calkins?

15 A. Yes.

16 Q. Do you recall telling Assistant  
17 District Attorney Calkins essentially the same  
18 things that were described in the Affidavit?

19 MR. TEHAN: Objection.

20 A. Yes.

21 Q. I'm going to ask you some specific  
22 questions about specific paragraphs and then I  
23 don't think I have much else to ask you. You

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204

1 read this carefully enough before you signed it  
2 to correct some typographical errors, correct?

3 A. Right.

4 Q. Someone, whoever prepared the  
5 document, apparently spelled Ayer AYRE as far as  
6 you remember?

7 A. Uh-huh. Yes.

8 Q. Attorney Tehan asked you about a  
9 warrant Affidavit, a search warrant Affidavit  
10 that's referenced in paragraph one of this  
11 document, Exhibit Six. I think you answered you  
12 don't recall actually reading it?

13 A. Right.

14 Q. But you have no reason to believe that  
15 you didn't review it, right?

16 A. Correct.

17 Q. I mention it because paragraph three  
18 picks up. I'm just going to quote from it. It  
19 says the Affidavit, and I believe it's referring  
20 to the search warrant Affidavit mentioned in  
21 paragraph one.

22 It says that I told the male  
23 informant that Kenny Waters told me -- then

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1 there's a quote within a quote, "that he had  
2 killed a woman in Ayer in a breaking and  
3 entering and that she (female) had better keep  
4 in line or he could do the same to her." Do you  
5 see that?

6 A. Yes, I do.

7 Q. The sentence in paragraph three goes  
8 on to say that this informant further said that  
9 the female remembers washing Waters' blood  
10 soaked clothing for him the day of murder but  
11 that Waters explained the blood as coming from  
12 his duties of meat cutting at his place of  
13 employment. Do you see that?

14 A. Yes.

15 Q. Do you recall that Mr. Osborne had  
16 apparently told Nancy Taylor and the Ayer Police  
17 that you helped Kenny wash his clothes on the  
18 morning after the murder?

19 A. Yes.

20 Q. That wasn't true, correct?

21 A. Right.

22 Q. To the best of your memory you never  
23 told Nancy Taylor or the Ayer Police that this  
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206

1 statement was attributed to you by Mr. Osborne,  
2 correct?

3 A. Right.

4 Q. Do you recall whether Officer Taylor  
5 specifically asked you whether you had assisted  
6 washing bloody clothes?

7 A. I don't remember.

8 Q. But you don't have any memory of ever  
9 telling her that, correct?

10 A. No.

11 Q. The Affidavit goes on. In paragraph  
12 four it says the statements the male informant  
13 attributes to me are false. Kenny Waters never  
14 told me that he killed a woman in Ayer in a  
15 breaking and entering and he didn't threaten to  
16 quote "keep me in line" or he would do the same  
17 to me. He never came home the day of the murder  
18 in clothing soaked in blood and explained the  
19 blood as coming from his duties of meat cutting.  
20 I never told anything like that to Robert  
21 Osborne. That's true, correct?

22 A. Yes.

23 Q. The next paragraph, paragraph five,  
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1 says Miss Marsh, one day, probably in October of  
2 1982 Police Officer Nancy Taylor and Chief  
3 Connors showed up at my house asking me about  
4 the Brow case.

5 Do you remember if they actually  
6 physically came to your house or was that the  
7 evening you went to Maxwell Silverman's or do  
8 you not recall specifically when they came to  
9 your house?

10 A. I don't remember.

11 Q. This paragraph goes on to say in  
12 paragraph five of the Affidavit, they told me  
13 that they knew I had information about Katy  
14 Brow's murder, that I would be charged as an  
15 accessory after the fact and receive ten years  
16 in state prison if I didn't help them and that I  
17 could lose my children.

18 You testified earlier today I  
19 believe that's something that sticks out in your  
20 mind?

21 A. Yes.

22 Q. Based on what I understood your  
23 testimony this morning, did you have concern in  
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208

1 1982 that there was a chance that you might lose  
2 custody of your children?

3 A. Yes.

4 Q. Of things that were important to you  
5 in 1982, would losing your children be among the  
6 things that would give you the most concern?

7 A. Yes.

8 Q. When they told you, Officer Taylor and  
9 Officer Connors, that you if you didn't help  
10 them that you might lose your children, did you  
11 believe that they meant what they said?

12 A. Yes, I did.

13 Q. Did they explain to you how they would  
14 cause you to lose custody of your children?

15 A. Charges of accessory after the fact.

16 Q. Paragraph six says, I'm reading from  
17 the paragraph, on a number of occasions before I  
18 testified for the first time on November 5, 1982  
19 Nancy Taylor and Chief Connors met with me and  
20 repeated these threats if I didn't cooperate  
21 with them. I'm going to ask you, did I read  
22 that accurately?

23 A. Yes, you did.

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1 Q. When it says that they repeated the  
2 threats if you didn't cooperate with them, did  
3 you understand cooperate with them to mean -- in  
4 your use of the term in the Affidavit, do you  
5 mean to say that if you didn't give them the  
6 information Robert Osborne said you possessed  
7 they would make good on the threats?

8 MR. FELDMAN: Objection.

9 A. Yes.

10 Q. Then you go on in the same paragraph,  
11 the first meeting was with both of them and  
12 Robert Osborne at Maxwell Silverman's  
13 restaurant?

14 A. Yes.

15 Q. You discussed that a little earlier  
16 with Attorney Tehan, correct?

17 A. Yes.

18 Q. It says, at that meeting I was  
19 confronted with statements Osborne had made to  
20 them about what he claimed I said about the Brow  
21 case. I denied that I made the statements  
22 Osborne claimed I made and Taylor and Connors  
23 kept saying if I didn't cooperate I would be

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210

1 charged as an accessory and lose my kids. Did I  
2 read that correctly?

3 A. Yes.

4 Q. I'm going to ask you specifically  
5 about the last sentence. It says here in your  
6 Affidavit, I denied that I made the statements  
7 Osborne claimed I made.

8 Does this help refresh your memory  
9 as to whether at the Maxwell Silverman's meeting  
10 you at least initially told Officers Taylor and  
11 Connors that you didn't make the statement that  
12 Osborne said you made?

13 MR. FELDMAN: Objection.

14 A. Yes.

15 Q. Do you remember what reaction they had  
16 when you told them other than what is said here  
17 in your Affidavit?

18 A. Not really.

19 Q. Just that they kept saying, repeating  
20 to you if you didn't cooperate you'd be charged  
21 as an accessory and lose your kids?

22 A. Right.

23 Q. Did you understand their response to

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1 mean that they did not accept your denial of  
2 knowledge of what Osborne said you knew and  
3 instead wanted you to agree with what Osborne  
4 had said you knew?

5 MR. FELDMAN: Objection.

6 A. Yes.

7 Q. In paragraph seven it says there were  
8 a number of meetings where I was picked up and  
9 brought to Cambridge for interrogation before I  
10 testified. I do not remember when I first began  
11 to go along with what they were suggesting, but  
12 I was very frightened and scared.

13 First I'm going to ask you about  
14 the second sentence. The they was Taylor and  
15 Connors, the police?

16 A. Yes.

17 Q. And I can see from the paragraph that  
18 you don't have a specific recollection of a  
19 particular moment in time where you decided to  
20 go along with what Taylor and Connors were  
21 suggesting. But is it fair to say, Miss Marsh,  
22 that at some point in time the pressure and  
23 threats resulted in you agreeing to --

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212

1 A. Yes.

2 Q. -- to give them the information they  
3 were looking for?

4 MR. FELDMAN: Objection.

5 A. Yes.

6 Q. That information was the information  
7 Osborne said you had?

8 A. Yes.

9 Q. It says here at the end of paragraph  
10 seven you were frightened and scared. Was that  
11 true?

12 A. Yes.

13 Q. Did you remain frightened and scared  
14 of the Ayer Police Department and losing your  
15 children from your first interaction in person  
16 at the night of the dinner at Maxwell  
17 Silverman's right through 1985 when you in  
18 Exhibit Five had occasion to give testimony once  
19 again --

20 A. Yes.

21 Q. -- in the Waters' matter?

22 A. Yes.

23 MR. TEHAN: I'll object.

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1 Q. I'm going to turn to paragraph eight  
2 which I believe there's actually two paragraph  
3 eights, but I will ask you about the first one  
4 that starts on page 1 and goes on to page 2.

5 Miss Marsh, it says in paragraph  
6 eight that there are certain things that were  
7 suggested to you that resulted in your  
8 testifying to them at trial and at a pretrial  
9 hearing.

10 Paragraph eight A says one of the  
11 things that were suggested to you says A) I  
12 called the diner the night of May 20, 1980 after  
13 Kenny had left to go to work there and asked to  
14 speak to Kenny but I was told he was not there.  
15 And you go on to say that never happened?

16 A. Uh-huh.

17 Q. Do you remember earlier today Attorney  
18 Tehan asked you about that and I think I  
19 understood you to say you really couldn't say  
20 one way or the other whether on the night before  
21 the murder you had called the diner?

22 A. Right.

23 Q. Now I'm going to ask you a question  
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214

1 that is to the best of your memory. Do you have  
2 any memory of calling the diner on the night  
3 before Miss Brow's murder and being told Kenny  
4 was not there?

5 A. No, I don't.

6 Q. When you answered Attorney Tehan and  
7 you said you can't say one way or the other, did  
8 you mean to say it's conceivable that you did  
9 but you have absolutely no memory of it?

10 MR. FELDMAN: Objection.

11 A. No.

12 Q. So you don't think you called the  
13 diner that night?

14 MR. FELDMAN: Objection.

15 A. No, I don't think I did.

16 Q. And do I understand your testimony to  
17 be the reason why ultimately you had indicated  
18 that you may have called the diner that night  
19 and was told Kenny was not there is because that  
20 was what was suggested to you by Officer Taylor  
21 and Officer Connors?

22 MR. FELDMAN: Objection.

23 A. Yes.

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1 Q. Paragraph B says, I testified that the  
2 morning of May 21, when Kenny came home he had a  
3 scratch on the left side of his face.

4 Is it fair to say you have no  
5 memory of Kenny Waters coming home on the  
6 morning of May 21 with a scratch on his face,  
7 correct?

8 A. Right.

9 Q. The Affidavit goes on to say, had a  
10 scratch on the left side of his face from under  
11 the eye to below the mouth several inches that  
12 he didn't have before he left for work.

13 Your last sentence in this  
14 paragraph says, this is not true. I know it was  
15 being suggested by Nancy Taylor but I don't know  
16 where she came up with it.

17 Miss Marsh, is it fair to say that  
18 the reason why you had indicated at some point  
19 that Waters came home on the morning of the 21st  
20 with a scratch on his face is because that's  
21 what Nancy Taylor had suggested you should say?

22 MR. FELDMAN: Objection.

23 A. Yeah. Yes.

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216

1 Q. I'm going to jump down to paragraph  
2 eight D, so we're one more from the last one.  
3 It's a long one but I'll read it quickly if the  
4 court reporter will allow me to.

5 I testified that in July of 1980  
6 Kenny and I had an argument. He came in drunk,  
7 had on new clothes and a new hat and dumped beer  
8 over my head and hit me in the back of legs with  
9 a plastic bat. That part is true. It's also  
10 true that I left after this incident and he  
11 didn't know I was leaving. What isn't true and  
12 was part of my testimony is that I asked Kenny,  
13 "did you kill that woman there?" And he said,  
14 "yeah, what's it to you." Kenny never said he  
15 killed anyone and no statements like that were  
16 made by Kenny the night I left.

17 I understood from earlier today  
18 you have no memory and you do not believe Kenny  
19 Waters ever told you he killed Miss Brow,  
20 correct?

21 A. Correct.

22 Q. The last sentence in paragraph E, I'm  
23 not going to read the whole paragraph, the

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1 reason I testified that it was Kenny's knife is  
2 that Nancy Taylor kept telling me it was Kenny's  
3 knife and I should so testify. Do you see that?

A. Yes.

Q. Do you remember being encouraged to  
6 testify that the photograph of the knife you  
7 were shown was Kenny's knife because that's what  
8 Nancy Taylor wanted you to say?

MR. FELDMAN: Objection.

A. Yes.

Q. No one in the Waters family has  
12 threatened you with any harm or anything over  
13 the last twenty years, have they?

A. No.

Q. When you testified at trial and the  
16 pretrial hearing, some of the testimony's been  
17 marked as Exhibit Three, Four, Four A and Five,  
18 you didn't provide that testimony, Miss Marsh,  
19 because you were scared of Kenny Waters, did  
20 you?

A. No.

Q. In fact, your testimony was the result  
23 of your desire to do what the Ayer Police

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218

1 Department was asking of you?

2 A. Exactly.

3 MR. TEHAN: Objection.

4 Q. If pressure was not applied to you as  
5 you described it earlier today by Officer Taylor  
6 and the Ayer Police Department, would you have  
7 testified the way you testified at Mr. Waters  
8 trial?

9 MR. TEHAN: Objection.

10 A. No.

11 Q. At least a large part of your  
12 motivation for providing the testimony that you  
13 gave was to make sure that you were able to  
14 continue to raise your son and daughter,  
15 correct?

16 A. Correct.

17 Q. Based on things Officer Taylor said to  
18 you, did you ever form a belief as to whether  
19 she understood that she was pressuring you?

MR. FELDMAN: Objection.

21 A. Repeat that please.

22 Q. Did you have a sense as to whether  
23 Officer Taylor knew that she was pressuring you?

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1 A. Yes.

2 MR. TEHAN: Objection on the basis  
3 it's speculative.

4 Q. Upon what did you base that?

5 MR. TEHAN: Objection.

6 Speculative.

7 A. It was the way she was putting things  
8 to me.

9 Q. You were asked certain questions today  
10 about your trial testimony and whether or not it  
11 was truthful. I'm not going to ask you that  
12 question, Miss Marsh. I'm just going to ask  
13 you, have you over the last several years since  
14 you provided the Affidavit and since Mr. Waters'  
15 release, have you ever had any concern for your  
16 own welfare with respect to any potential  
17 perjury charges?

18 A. No.

19 Q. When I say concern, as you sit here  
20 today do you have any concern that the Ayer  
21 Police Department or the District Attorney's  
22 Office might try to mischaracterize what  
23 happened in the early 1980's as perjury.

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220

1 MR. TEHAN: Objection.

2 A. No.

3 MR. FELDMAN: I don't believe I  
4 have anything else at the moment for this  
5 witness.

6 MR. TEHAN: I have a couple more.

7 **Examination by Mr. Tehan:**

8 Q. Miss Marsh, you knew that when you  
9 testified under oath at criminal proceedings  
10 involving Mr. Waters that your testimony was  
11 subject to the pains and penalties of perjury,  
12 correct?

13 A. I guess so.

14 Q. Well, you knew that, right?

15 A. Yeah.

16 Q. And also you knew that perjury was a  
17 crime, correct?

18 A. Yes.

19 Q. And you knew that if convicted of  
20 perjury at the Waters trial you might go to  
21 jail, correct?

22 A. Yes.

23 Q. And you knew you might lose your kids

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1 in that event, true?

2 A. Yes.

3 Q. Do you have any reason to believe that  
4 Mr. Osborne did not make the statements to the  
5 Ayer Police which they attributed to him in  
6 their discussions with you?

7 A. He made those statements to them.

8 Q. You mentioned that you met with  
9 Assistant District Attorney Calkins at some  
10 point, Sheila Calkins?

11 A. Uh-huh.

12 Q. When did that take place?

13 A. May or June of '01, maybe even April.  
14 I don't know.

15 Q. Was that before or after Mr. Waters  
16 was released from jail?

17 A. I don't know if he was out then. I  
18 have no clue.

19 Q. Who else was present at that meeting?

20 A. Attorney Salsberg.

21 Q. That was your attorney?

22 A. Yes.

23 Q. Why did you engage a private attorney  
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222

1 at that point?

2 A. I can't tell you why. I just thought  
3 I needed one.

4 Q. Why did you think you needed one?

5 A. I don't know.

6 Q. Did you ever attend a meeting with  
7 Chief Rizzo of the Ayer Police Department?

8 A. Not that I can remember.

9 Q. How many times did you meet with  
10 Sheila Calkins?

11 A. I don't think I met with her  
12 personally. I had to sit in front of her and  
13 she had to ask questions.

14 Q. That was in person, correct?

15 A. Yes.

16 Q. How many times did you do that?

17 A. I don't know.

18 Q. Did Miss Calkins tell you why she was  
19 asking you the questions?

20 A. I don't know.

21 Q. Did you have an understanding at that  
22 point as to why you were meeting with her?

23 A. Yeah.

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1 Q. What was your understanding?

2 A. That Kenny was -- for the wrongful  
3 imprisonment of Kenneth Waters.

4 MR. TEHAN: Give me a quick  
5 second.

6 (Short recess).

7 Q. I have two more questions. Miss  
8 Marsh, when you testified earlier that you  
9 learned from some source that Mr. Osborne had  
10 said that you would change your testimony in  
11 exchange for money, would it refresh your  
12 recollection if I were to suggest that he made  
13 that statement not to the Ayer Police but to Mr.  
14 Waters' defense attorney, Mr. Peters?

15 A. Yes, he did. Thank you.

16 MR. TEHAN: You may have some  
17 more, Counsel. I don't.

18 A. I couldn't remember who he said that  
19 to.

20 MR. TEHAN: For the record, there  
21 are a couple of outstanding events. We learned  
22 from Miss Conwell that there may be a revision  
23 to the response of request for production to  
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224

1 include some new documents. And also I think we  
2 are waiting for some documents from the Attorney  
3 General.

4 On that basis, and I'm going to  
5 hope and trust it would not happen, I'm going to  
6 technically reserve the right to reconvene if  
7 anything materializes in that regard.

8 MR. FELDMAN: And I will reserve  
9 my rights regarding any outstanding discovery  
10 from any source.

11 I think we all need to  
12 collectively say thank you to Miss Marsh for  
13 appearing today.

14 (The deposition was suspended at  
15 4:40 p.m.)

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